

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KIM KATES McGRORY and
JAMES McGRORY, h/w,
Plaintiffs,

v.

CITY OF PHILADELPHIA
and
PHILADELPHIA INTERNATIONAL AIRPORT,
Defendants.

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No. 06-cv-1572

MEMORANDUM ORDER

Presently pending is the “Motion of Defendants, City of Philadelphia and ‘Philadelphia International Airport,’ To Dismiss Plaintiffs’ Complaint, Pursuant To Federal Rule of Civil Procedure 12(b)(6), Or In The Alternative For A More Definitive Statement, Pursuant To Federal Rule of Procedure Rule 12(e)” (Dkt. #5) and the responses thereto.

Plaintiffs, husband and wife Kim Kates McGrory and James McGrory III, filed their Complaint against Defendants on April 13, 2006 alleging that Plaintiff Kim Kates McGrory slipped and fell on wet floor at the Philadelphia International Airport on April 18, 2004, suffered personal injuries because of the fall and that the direct and proximate result of her injuries were the acts and/or omissions of the named defendants. In response, Defendants City of Philadelphia and Philadelphia International Airport filed their Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), or in the alternative, for a More Definite Statement, pursuant to Fed. R. Civ. P. 12(e) arguing that: 1) Defendant Philadelphia International Airport is not subject to suit; 2) Plaintiffs fail to set forth facts or allegations sufficient to permit a liability finding against Defendant City of Philadelphia; 3) Defendant City of Philadelphia is immune from suit on Plaintiffs’ claims under the Tort Claims Act; 4) Plaintiffs are precluded from recovering punitive damages under the Tort Claims Act; and 5) Plaintiffs are precluded from recovering for Mrs.

McGrory's alleged inability to "pursue her normal activities" and "interest, costs of suit ..." claims under the Tort Claims Act.

In their response pleading, Plaintiffs acknowledge that City of Philadelphia is the properly named defendant and do not object to the dismissal of Philadelphia International Airport as a named defendant. Additionally, Plaintiffs seek leave to file an Amended Complaint that is attached to their response pleading as Exhibit B. Defendants filed a reply memorandum to Plaintiffs' response pleading on June 20, 2006.

The United States Supreme Court, in Swierkiewicz v. Sorema N.A., 122 S. Ct. 992 (2002) stated that

[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding.

Id. at 998. Upon review of Plaintiffs' Complaint, this court finds that the allegations are too vague and ambiguous to provide sufficient notice to Defendants as required by the Federal Rules of Civil Procedure. Therefore, Plaintiffs' request for leave to file an Amended Complaint shall be granted and this court shall grant Defendants' Motion, in the alternative, for a More Definite Statement.

Additionally, based upon the agreement of both parties that Defendant Philadelphia International Airport should be dismissed as a named defendant, this court shall dismiss Philadelphia International Airport as a named defendant in this matter.

AND NOW, this 30th day of August 2006, upon careful consideration of the pleadings submitted by counsel for the parties, **IT IS HEREBY ORDERED** that the "Motion of Defendants, City of Philadelphia and 'Philadelphia International Airport,' To Dismiss Plaintiffs' Complaint, Pursuant To Federal Rule of Civil Procedure 12(b)(6), Or In The Alternative For A More

Definitive Statement, Pursuant To Federal Rule of Procedure Rule 12(e)” (Dkt. #5) is **GRANTED** in part as to the dismissal of Philadelphia International Airport as a named defendant and as to Defendants’ Motion, in the alternative, for a More Definite Statement. Accordingly, **IT IS FURTHER ORDERED** that Defendants’ Motion to Dismiss is **DENIED** as to their remaining claims.

IT IS FURTHER ORDERED that Plaintiffs shall file an Amended Complaint within ten (10) days of the date of this Order and that Defendant City of Philadelphia shall have twenty (20) days from the date of service of process to file an Answer or to otherwise respond to Plaintiffs’ Amended Complaint.

BY THE COURT:

S/ Clifford Scott Green

CLIFFORD SCOTT GREEN, S.J.